

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

HLTH CORPORATION and)	
EMDEON PRACTICES)	
SERVICES, INC.)	
Plaintiffs)	
v.)	C.A. No. 07C-09-102 RRC
AXIS REINSURANCE COMPANY;)	
CERTAIN UNDERWRITERS AT)	
LLOYD’S, LONDON,)	
CLARENDON NATIONAL)	
INSURANCE COMPANY;)	
GULF INSURANCE COMPANY)	
N/K/A THE TRAVELERS)	
INDEMNITY COMPANY;)	
NATIONAL UNION FIRE)	TRANSFERRED PURSUANT
INSURANCE COMPANY OF)	TO 10 <i>Del. C.</i> § 1902
PITTSBURGH, PA;)	
NEW HAMPSHIRE INSURANCE)	
COMPANY; OLD REPUBLIC)	
INSURANCE COMPANY;)	
RSUI INDEMNITY COMPANY;)	
SAFECO INSURANCE COMPANY)	
OF AMERICA and ZURICH)	
AMERICAN INSURANCE)	
COMPANY,)	
Defendants)	
)	
)	

Submitted: March 9, 2009

Decided: March 23, 2009

Upon HLTH’s “Motion to Require New Hampshire Insurance Company to
Comply with this Court’s Prior Ruling Requiring the Advancement and
Reimbursement of Defense Costs.”

GRANTED.

ORDER

David J. Baldwin, Esquire, and Jennifer C. Wasson, Esquire, Potter Anderson Coroon, LLP, Wilmington, Delaware, and William G. Passannante, Esquire, Anderson Kill & Olick, P.C., New York, New York, Attorneys for Plaintiffs.

John D. Balaguer, Esquire, White and Williams, LLP, Wilmington, Delaware, and Michael S. Loeffler, Esquire, Loeffler Thomas Touzalin, LLP, Northbrook, Illinois, Attorneys for Defendant New Hampshire Insurance Company.

COOCH, J.

This 23rd day of March, 2009, after consideration of the relevant case law and the parties' positions set forth in their submissions and at oral argument, the Court finds:

1. This Court entered an order on July 31, 2008 (corrected on October 3, 2008), ordering that HLTH "may collect payments [legal fees and costs]" from several insurance companies, including New Hampshire Insurance Company, for legal fees incurred in connection with an underlying federal criminal action in Charleston, South Carolina.¹ (In actuality, New Hampshire and the other insurance companies in the same tower have been reimbursing HLTH for HLTH's payments of such invoices.)
2. HLTH provided New Hampshire with copies of invoices for defense costs on November 7, 2008 and December 5, 2008. HLTH also submitted

¹ For additional facts, see *HLTH Corp. v. Agricultural Excess and Surplus Ins. Co.*, 2008 WL 3413327 (Del. Super.).

proof to New Hampshire on December 24, 2008 that the invoices it had paid had been deemed appropriate by HLTH for reimbursement.

3. To date, New Hampshire is the only insurer among the Lloyd's Layer Underwriters that has failed to reimburse HLTH for its share of the defense costs HLTH presented for reimbursement.

4. New Hampshire has admitted that it has a duty to advance, and has, in fact, reimbursed HLTH for prior legal defense costs.

5. New Hampshire contends that, pursuant to the terms of its contract with HLTH, only reasonable and necessary fees, costs and expenses need be reimbursed and that New Hampshire is entitled to adequate time to review bills and seek information necessary to make appropriate evaluations.

6. However, the first time that New Hampshire raised any issue or sought any additional information from HLTH about the legal invoices in question was February 23, 2009—the same day New Hampshire filed its opposition to the instant motion.

7. New Hampshire contends that, pursuant to the Supreme Court's decision in *Kaung v. Cole National Corporation*, New Hampshire is entitled to a hearing to determine the reasonableness of the reimbursement requests.²

However, this Court finds that New Hampshire has waived its right to a

² *Kaung v. Cole Nat'l Corp.*, 2004 WL 1921249 (Del. Ch.), *aff'd in part, overruled in part*, 884 A.2d 500 (Del. 2005).

hearing by having failed to timely respond to HLTH's requests for reimbursement.³

8. In addition, both parties agree that a process exists whereby New Hampshire may recoup any payments made to HLTH later found to be unreasonable.

WHEREFORE, the Court orders (as specifically requested by HLTH):

- a. New Hampshire shall reimburse HLTH in the amount of \$ 1,129,378.28 forthwith;
- b. New Hampshire shall advance future defense costs within 60 days of receipt of invoices;
- c. New Hampshire shall reimburse defense counsel expenses promptly upon receipt of invoices; and
- d. The Court declines to award HLTH's attorneys' fees in connection with this motion.

IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary
cc: All counsel of record

³ See *Baio v. Comm'l Union Ins. Co.*, 410 A.2d 502, 508 (Del. 1979) (noting, "in this context, we mean 'waiver' as a 'doctrine resting on an equitable principle, which courts of law will recognize, that a person, with full knowledge of that fact, shall not be permitted to act in a manner inconsistent with his former position or conduct to the injury of another.'").